

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118

1050 K STREET NW | SUITE 1040
WASHINGTON, DC 20001

TEL (212) 763-0883 | FAX (212) 564-0883

WWW.KAPLANHECKER.COM

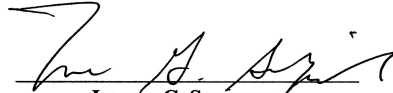
Defendants shall file a letter, not to exceed three pages, in response by **March 15, 2023**. So Ordered.

Dated: March 9, 2023

New York, New York

DIRECT DIAL 212.763.0883

DIRECT EMAIL rkaplan@kaplanhecker.com



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

March 8, 2023

The Honorable Lorna G. Schofield
United States District Court for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, New York 10007

Re: *Catherine McKoy, et al. v. The Trump Corporation, et al.*, 18-cv-09936 (LGS) (SLC)

Dear Judge Schofield,

We write with respect to the Court's December 13, 2022 Order, ECF 507, which set a "firm" trial date of January 29, 2024 in this action, to bring to the Court's attention recent filings by Defendants in *People of the State of New York v. Donald J. Trump, et al.*, Index No. 452564/2022 (Sup. Ct. N.Y. Cnty.) (the "NYAG Case"), that not only seek to delay the trial in that case, but also propose a new schedule that (believe it or not) would appear to conflict with the firm trial date set by this Court, a date that was set based on Defendants' representations and assurances—indeed, at their request.

* * *

As Your Honor will recall, following the announcement by Defendant Donald J. Trump that he intends to run for President in the 2024 election, Plaintiffs sought a late 2023 trial date in this case. ECF 499 at 1; ECF 500. We anticipated that, should the case schedule run into 2024, "Mr. Trump will begin to argue that his campaign obligations must take precedence over his participation in this case, including at trial." *Id.* at 2. This was not mere speculation: Donald Trump has a history of leveraging his presidential-campaign activities to delay and avoid judicial proceedings, as he did, for example, in *Low v. Trump University, LLC*, No. 10 Civ. 940 (S.D. Cal.)—another consumer fraud class action—where he successfully requested that trial be delayed until after the 2016 election. *See* Conference Tr., *Low*, No. 10 Civ. 940, at 10-19, ECF 481.

Defendants opposed our request on the basis that a late 2023 trial date was "simply not workable" because it would coincide with trial in the NYAG Case, then scheduled to begin on October 2, 2023. ECF 503 at 3. Defendants' counsel Mr. Robert noted that he would be participating in that trial on behalf of Donald J. Trump, Jr. and Eric Trump (who are both Individual Defendants here), and that he anticipated trial in the NYAG Case would last "longer" than the Attorney General's estimate of six to eight weeks. *Id.*

The Court directed the parties to state “their availability for trial from October 2023 to June 2024, so that a trial date may be set,” ECF 504 at 2, and Mr. Robert requested that “trial in this matter begin no earlier than February 2024” because Justice Engoron, who is presiding over the NYAG Case “has ordered the trial [in that case] to begin on October 2, 2023,” and, consequently, Mr. Robert and his partner “will be actively engaged in [the NYAG Case] starting on October 2, 2023 until likely December 2023,” ECF 505 at 1. The Court accommodated counsel’s request, and scheduled a “firm” trial date for the end of January 2024. ECF 507 at 1.

Now, however, consistent with the pattern of delay we identified in our filings, Defendants are seeking to postpone trial in the NYAG Case to December 2023 and early 2024. Last week, on March 3, on behalf of the defendants in the NYAG Case—including all of the Individual Defendants in this action—Mr. Robert moved to vacate the case management schedule in the NYAG Case and substitute a new schedule that, he admitted, would “ultimately impact[] the trial date.” Defs.’ Mem. of Law in Supp. of Mot. to Vacate and Modify Prelim. Conference Order, *New York v. Trump*, Index No. 452564/2022, at 9 n.8, NYSCEF 517. The defendants went so far as to propose a schedule in which the trial in the NYAG case would not begin—at the earliest—until mid-December 2023. *Id.* at 20. Based on Mr. Roberts’s prior estimate that trial in that case will take longer than eight weeks, the delay that the Individual Defendants are now seeking in the NYAG Case would almost inevitably risk interfering with the January 29, 2024 trial date the Court has set for this case. And yet in their submission in that case, the Individual Defendants made no mention at all of their obligations here (nor did they alert us to their filing). It is beyond our understanding how the Individual Defendants could make such a proposal in the face of this Court’s prior Order not only accommodating their request, but making clear the resulting January 29, 2024 trial date was “firm.” *See* ECF 507 at 1.

Justice Engoron has ordered the New York Attorney General to respond to Defendants’ scheduling motion by March 15 and has scheduled argument for March 21. *See* Order to Show Cause, *New York v. Trump*, Index No. 452564/2022, at 2, NYSCEF 542.

In order to avoid inconsistency or delay, Plaintiffs are sending a copy of this letter to Justice Engoron as well, and are filing a copy of it on the docket in the NYAG case. We are happy to make ourselves available if this Court or Justice Engoron have any questions or would like to discuss.

Respectfully submitted,



Roberta A. Kaplan

cc: Justice Engoron (via NYSCEF)
Counsel of Record (via ECF)